

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CMA No.160 of 2017

JUDGMENT:

Though the matter is listed under interlocutory caption, both the learned counsel for the parties represented that the issue that arises for consideration in the miscellaneous petition as well as in the appeal are one and the same, and hence they requested the court to hear the appeal and dispose of the same. With the consent of both the parties, the appeal is heard and is being disposed of.

2. This appeal is filed by the respondent/defendant questioning the order dated 09.02.2017 in I.A.No.1755/2016 in O.S.No.487 of 2016 on the file of the XII Additional District Judge-cum-Judge, Family Court, Guntur.

3. Heard the learned counsel on either side and perused the record.

4. The respondents/plaintiffs filed O.S.No.487 of 2016 against the appellant praying the court to remove him as Managing Trustee of Sri Dhulipalla Veeraiah Choudary Memorial Trust (hereinafter referred to as "the Trust") and to appoint new Managing Trustee and twenty trustees for the administration of Trust. The milk producers in Gutur District formed themselves as a Society and thereafter transformed into a Mutually Aided Cooperative Society, and later on established Sangam Dairy and created the Trust with the amount of one day sale of the milk. The farmers, milk producers and rural youth are the beneficiaries of the trust. The Government had allotted certain land to the Society. The appellant contrary to rules, without taking permission or approval from the authorities concerned and even without the resolution of the General

Body, transferred Ac.10.00 to the Trust under two gift deeds. It is stated that contrary to the objects of the Trust, the appellant, who was posing himself as owner of the trust property, has committed breach of trust by laying foundation to construct a super speciality hospital in the land situated in Sy.Nos.26/1, 26/2, 26/3, 30/1, 30/2, 31/3, 32/2 and 35/2 situated in Vadlamudi village Chebrolu Mandal, Guntur District and continuing the construction of a hospital. The respondents/plaintiffs along with the suit filed I.A.No1755/2016 to restrain the appellant from constructing the hospital.

5. The appellant filed counter therein contending that the respondents/plaintiffs have no *locus standi* to file the suit as well as the I.A. and they are no way connected to the Trust. He further contended that the conveyance or the transfer of an extent of Ac.10.00 land was done for the benefit of the trust, in accordance with law. He further contended that construction of Super Speciality Hospital is for the benefit of the beneficiaries under the trust and forms part of the objects of the trust, as laid down in Clause-3(b) of the Trust deed. The appellant contended that there was amendment to the existing clause 3(f) of the deed of trust and the same was registered in accordance with law, which provides for establishment and maintaining of hospitals etc. Therefore, it is contended that the respondents/plaintiffs have no right to question the activities of the trust and are not entitled to file the suit and as well as IA.

6. The court below after considering the rival contentions of the parties, allowed the IA restraining the appellant from constructing the hospital.

7. This court vide orders dated 13.03.2017, while suspending the impugned order for a limited period, made an observation that “any construction is made subject to disposal of CMA”.

8. Learned senior Counsel appearing for the appellant/defendant has elaborately argued all the aspects of the matter touching the scope of the suit, its maintainability, improper grant of leave for filing the suit, the interim relief sought for and granted being beyond the scope of the suit and has also taken me through the various documents with regard to the creation of trust, its objects, its amendments etc. By relying upon the above aspects, learned senior Counsel submits that the impugned order dated 09.02.2017 in I.A.No.1755 of 2016 is contrary to the provisions of Order 39 Rules 1 and 2 C.P.C., that allegations are made against the authors/donors of the Trust without making them parties, that the learned XII-Additional District Judge has no jurisdiction to try the suit, that the suit is filed by the persons who do not have any substantial interest in the Trust, that a reading of the plaint clearly shows that the plaintiffs do not have the welfare of the Trust in filing the suit, that the suit is also bad for non-joinder of Dhulipalla Veeraiah Choudary Memorial Trust, which is mandatorily required and instead filed the suit only against the appellant/defendant and since the allegation is that it is the Trust which is constructing a super specialty hospital in the Government land, the State also ought to have been made a party, that the competence of the Trust to make amendments to the Trust Deed cannot be questioned and establishing and running the institutions including hospitals is one of the objects of the Trust and that the Court also erred in not taking into consideration the fact that the relief that is now sought for has no nexus

with the main relief in the suit. Learned senior Counsel further submits that without making the Trust as a party, the Court ought not to have granted injunction restraining the appellant/defendant from making construction of the hospital in view of the fact that the hospital is being constructed not by the appellant/defendant but by the Trust. Learned senior Counsel further submits that the Court below also failed to appreciate the fact that neither there is a *prima facie* case nor balance of convenience in favour of granting injunction and it is the appellant/defendant who will suffer irreparable loss if injunction is granted since the construction which is being carried out after obtaining permission from the competent authorities is sought to be stalled by virtue of the injunction.

9. On the other hand, learned Counsel appearing for the respondents/plaintiffs submits that the main object of the Trust has been defeated by the acts of omission and commission on the part of the managing trustee namely the appellant/defendant and that construction of a hospital on the property of the Trust is certainly not for the welfare or benefit of the beneficiaries of the Trust. It is submitted that the main object of the Trust was to cater to the needs of the farmers, milk producers etc., and develop self-employment in the rural areas and maintain educational and other institutions to impart education at all stages for the promotion of Literature or Arts, Science and other subjects specifically in dairying, animal husbandry and agriculture. Construction of a super specialty hospital to treat the persons is not the main object of the Trust and it is also submitted that if the construction is being made for a veterinary hospital that may fall within the objects of the

Trust but certainly not the super specialty hospital to treat the human beings. It is also alleged that the purpose of constructing the super specialty hospital on the property of the Trust is to benefit the managing trustee and his family members and not for the benefit of the beneficiaries of the Trust. It is submitted that the questions that are now raised by the learned senior Counsel appearing for the appellant/defendant are the issues which need to be adjudicated in the suit after full fledged trial but *prima facie* since construction of a super specialty hospital is not within the objects of the Trust, the Court below has rightly granted injunction restraining the appellant/defendant from constructing such a hospital on the property of the Trust. Learned Counsel submits that there are no grounds to interfere with the order impugned, that there are no merits in the appeal and the same is liable to be dismissed.

10. After having heard the erudite submissions made by both the learned Counsel appearing for the appellant/defendant and the respondents/plaintiffs, I have no hesitation in holding that insofar as the present CMA is concerned, the point lies in narrow compass and that is whether the respondents/plaintiffs have made out a *prima facie* case and balance of convenience is in their favour for granting an injunction restraining the appellant/defendant from proceeding with the construction of a super specialty hospital on the property of the Trust.

11. It is also in dispute as to whether the construction of the super specialty hospital being carried out on the property of the Trust is in accordance with the Rules of the local body and whether any valid permission has been obtained from the competent authorities for making a construction.

12. The main purport of the objections raised and submissions made by the learned counsel for the appellant/defendant, which are, however, controverted are as under:

- a) The suit which is being tried by the Additional District Judge is without jurisdiction, since the suit of the present nature is required to be tried by a Principal District Judge;
- b) Before entertaining a suit filed under Section 92 of CPC, notice should generally be issued unless extraordinary circumstances are shown to exist;
- c) The reliefs that are prayed for in the main suit are such which cannot be granted, since they affect the very Trust and since the Trust is not made a party and the suit is only filed against individual by name Sri Dhulipalla Narendra Kumar, who is described as Managing Trustee of the Trust, it is not maintainable.
- d) The allegation is that the construction that is being made is on the government land and hence the State is also necessary party, and since the State is not impleaded the suit is bad for non-joinder of necessary parties.
- e) The act of donating the land to the Trust by way of Gift Deeds is questioned without impleading the affected parties, who are necessary for effective adjudication.
- f) Whether the approval of the Special Cadre Deputy Registrar of APDDCF Hyderabad is required.
- g) Whether the objects of the Trust will be fulfilled, if a super specialty hospital for treating the human beings is constructed, managed and maintained by the Trust.
- h) Whether the amendments subsequently made to the Trust Deed is in accordance with law.

- i) Whether the construction being made is being carried out after obtaining the necessary permissions from the CRDA, which is the Authority competent to accord permission for making any construction on the property.
- j) Whether the respondents/plaintiffs who filed the suit claiming themselves to be the beneficiaries of the Trust do really have interest in the welfare of the Trust or they are trying to malign the appellant/defendant with political, personal and ulterior motives.
- k) Whether the interim relief that is sought for restraining the appellant/defendant from making any constructions of super specialty hospital on the land of the Trust is beyond the scope of the suit, where the prayer is to remove the appellant/defendant as Managing Trustee of the Trust, appoint a new Managing Trustee and twenty trustees for the administration of the Trust, and to direct the appellant/defendant to furnish clear and accurate accounts of the trust property/money for the period from 17.09.1994 till the date of filing the necessary documents relating to the accounts.
- l) As against the above, the relief in the interlocutory application is to restrain the appellant/defendant from making any constructions and therefore, it is said that it is beyond the scope of the main relief sought for in the suit.

13. Both the learned senior counsel appearing for the parties relied upon certain authorities in support of their respective contentions. However, I am of the considered opinion that at the interlocutory stage, the objections that are raised and contentions made cannot be decided or answered affirmatively or negative the same, since they are questions which need to be adjudicated in the main suit after a full fledged trial and,

if any findings are delivered on any of the contentious issues, it will amount to pre-judging the suit, which is not permissible.

14. Orders in the interlocutory applications are supposed to further the cause of the suit or protect the property till the disposal of the suit, but the questions/objections/contentions as raised which make the pendency of the suit infructuous cannot be decided unless they are specifically provided in any statute. What is all that is required to be seen for the present is as to whether the construction that is admittedly being carried out on the property of the Trust for the purpose of establishing a super specialty hospital can be allowed to continue or there should be injunction restraining from proceeding with the construction pending disposal of the suit.

15. When the Trust was formed, its main objects were as under:-

- a) To train farmers, milk producers and rural youth in Dairying, Livestock production, agriculture and other allied activities so as to develop self-employment in the rural areas;
- b) To establish, aid and maintain educational and other institutions to impart education, at all stage for the promotion of literature, Arts, Sciences and other subjects specifically in Dairying, Animal Husbandry and Agriculture;
- c) To conduct cattle shows, milk yielding, competitions and calf rallies;
- d) To conduct workshops/seminars which are useful to Milk producers, Farmers and Dairy Industry;
- e) To give finance assistance to the children of milk producers of Guntur District for Higher Education;

- f) To train employees of Dairy for better skill and knowledge in modern Dairying;
- g) To honour the best milk producer and the best Milk Producers' Co-operative Society in the District;
- h) To honour the eminent persons in the fields of Animal Husbandry and Dairying and Agriculture for their outstanding services to the Rural community.

Subsequently, the objects were amended and the following object was inserted as 3 (h), which reads as under:-

“to start run, maintain and manage medical institutions for medical relief and/or maintenance of the sick and/or establishment, maintenance and support of or donations to one or more hospitals, dispensaries, nursing homes, medical centres and utilization of funds for medical relief of all kinds.”

Prima facie it can be said that the original Trust Deed do not provide for constructing a super specialty hospital to treat the human-beings and the objects of the Trust were directed towards animal husbandry, dairying, benefit of milk producers, training in the field of dairying and agriculture are provided for. Amendment carried out subsequently on 06.10.2016 *prima facie* do not appear to be in fulfillment of the original object sought to be achieved by the Trust. It is rightly submitted by the learned Counsel appearing for the respondents/plaintiffs that nothing prevents the Trust from constructing, running or maintaining a veterinary hospital or construct a building for any other purpose but certainly there cannot be a construction of super specialty hospital to treat human beings on the property of and with the funds of the Trust.

16. However, since the appellant/defendant being the managing trustee of the Trust claims to have obtained valid permission for constructing the super specialty hospital and the construction work is said to have commenced, the balance of convenience do not lie in favour of stopping the constructing activity as such of a building on the property of the Trust. If entire construction activity is stopped, it is the Trust which suffers irreparable loss which cannot be compensated. On the other hand, if the construction is taken up and completed, the respondents/plaintiffs who claim to be the beneficiaries of the Trust do not suffer any loss since a building will come up on the property of the Trust which can be put to any use to fulfill the objects of the Trust.

17. Taking into consideration the totality of the facts and circumstances of the case, since the original suit is pending and the rival contentions are to be adjudicated therein after full fledged trial and pending disposal of the same, I am of the opinion that the C.M.A. can be disposed of with the following directions:-

- 1) The appellant/defendant can proceed with the construction of the building strictly in accordance with law on the suit schedule land which shall however be without prejudice to the claim of either the appellant/defendant or the respondents/plaintiffs.
- 2) That the appellant/defendant should file an affidavit in the trial Court undertaking that he will not put to use the building which is intended to be constructed to establish the super specialty hospital till the issue is finally adjudicated in the suit and that he will abide by the result of the suit without claiming any equities.

3) That if the appellant/defendant violates the undertaking pending disposal of the suit, it is open to the respondents/plaintiffs to move the trial Court and obtain appropriate orders and the learned XII-Additional District Judge is directed to dispose of the suit on merits uninfluenced by any of the observations made herein above, within a period of six months from the date of receipt of a copy of this Judgment.

18. The Civil Miscellaneous Appeal is accordingly disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed, in consequence.

Date: 12.04.2017
Dsr/Smr



M.S.K.JAI SWAL,J